

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 2363 OF 2020

Chitra P. Chhabra and Ors.

... Petitioners

Versus

Smt. Ritu (Rita) K. Rajpal and Anr.

... Respondents

Mr. Pradeep J. Thorat i/by Aniesh S. Jadhav for the Petitioners.

Ms. Ayushi Anandpara a/w Shewta Jaydev and Anuja Bhansali i/by
Rashmikant and Partners for the Respondent 1.

CORAM: ROHIT B. DEO, J.

DATE : 24th JUNE, 2022

P.C. :-

. The petitioners are defendants 1 to 5 in Civil Suit 6500 of 2004 and are assailing the order dated 3rd February, 2020 rendered by the City Civil Court whereby Chamber Summons 361 of 2017 moved by the respondent 1 seeking direction to discover on oath the documents listed in the schedule, is allowed. The operative part of the order impugned reads thus :-

ORDER

1. *Chamber Summons No. 361 of 2017 is hereby made absolute in terms of prayer clause (a) and (b).*
2. *Parties to bear their own cost.*
3. *Chamber Summons No. 361 of 2017 is disposed off accordingly.*

2. Schedule to the chamber summons makes reference to 20 documents. In the affidavit in opposition, the defendants had contended that while certain documents are not in their possession, the other documents are not relevant. However, accepting the submission of the plaintiffs, the learned Trial Judge has allowed the chamber summons.

3. It would not be necessary to delve deeper in the respective contentions in view of the development which has occurred during the pendency of this petition.

4. My attention is invited to communication dated 12th March, 2020. A statement is made on behalf of the learned counsel for the defendants that 11 documents which are referred to in paragraph 1 of the letter dated 12th March, 2020 were annexed with the communication and in paragraph 2, the defendants have categorically stated that the documents at serial I to XV are not in the possession of the defendants.

5. The learned counsel for the plaintiffs would submit that the assertions in the letter that the documents referred to in paragraph 2 are not in possession of the defendants, is factually incorrect.

6. At this stage, it would not be possible for the Court to come to any conclusion as to the veracity of the rival contentions and indeed such an exercise is not permissible. A specific stand is taken that certain documents are not in possession of the defendants. The plaintiffs are free to demonstrate, at an appropriate stage that the documents were / are in possession of the defendants. The plaintiffs are further at liberty to invite the Trial Court to draw an adverse inference, if in law such a course is permissible. I see no propriety in keeping the petition pending, in view of the statement of the learned counsel for the defendants that the order of the Trial Court is complied with. Reserving the liberty with the plaintiff to demonstrate that there is as a fact non-compliance of the order impugned, the petition is disposed of.

[ROHIT B. DEO, J.]